Ref. No. 342

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,
Complainant,

vs.

EAGLES GROUPS, INC., d/b/a
GOLDEN EAGLE SERVICES,
Respondent.

8 U.S.C. §1324a
PROCEEDING

OCAHO CASE
No. 90100368

DECISION AND ORDER GRANTING
COMPLAINANT'S MOTION FOR SUMMARY DECISION

On December 18, 1990, the United States of America filed the above captioned Complaint alleging that Respondent, Eagles Groups, Inc., d/b/a Golden Eagle Services, had engaged in sixteen violations of the Immigration and Nationality Act's "paperwork" requirements, specifically 8 U.S.C. §1324a(a)(1)(B). On December 20, 1990, the Executive Office for Immigration Review, through the Chief Administrative Hearing Officer, served a Notice of Hearing on Complaint Regarding Unlawful Employment.

On March 14, 1991, Complainant filed a Motion for Summary Decision in this matter. Complainant argues from the supporting material that there are no genuine issues of fact in this case and that it is entitled to a favorable summary adjudication on all liability issues. It also seeks a civil penalty in the amount of $4,800 as well as a cease and desist order against the Respondent.

On March 18 and April 2, 1991, I conducted conference calls in an effort to settle the matter and to explore the issues presented.

On April 3, 1991, I issued a Show Cause Order requiring Respondent to file, copy to the Complainant, on or before May 10, 1991, a written statement setting forth the reasons why the Motion for Summary Decision should not be granted. Respondent has not filed a response to the show cause order.

STANDARDS APPLICABLE IN SUMMARY DECISION PROCEEDINGS

The Rules of Practice and Procedure applicable for the instant proceeding provide for summary adjudications where no genuine

issues of material fact exist. In such circumstances, a party is entitled to summary relief. See 28 C.F.R. §68.36(c) (1990). A fact is "material" if it retains the potential to influence the outcome of a case. See Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986).

The party seeking summary relief assumes the initial burden to demonstrate the absence of any issues of material fact. See Richards v. Neilsen Freight Lines, 810 F.2d 898 (9th Cir. 1987). All evidentiary ambiguities and reasonable factual inferences are to be resolved in favor of the nonmoving party. See Harbor Ins. Co. v. Trammell Cross Co., Inc., 854 F.2d 94 (5th Cir. 1988), cert. denied 109 S.Ct. 1315, 103 L.Ed.2d 584. Once the moving party meets its initial burden, the nonmoving party must then present facts which show the existence of genuine factual issues.

Complainant has presented evidence to support its motion for summary decision and Respondent has failed to controvert that evidence. Accordingly, Complainant's motion for summary decision is hereby granted.

THE STATUTE AND THE FACTS

A violation of 8 U.S.C. §1324a(a)(1)(B) (the "paperwork" requirement) is established whenever Complainant demonstrates that an individual or an entity has hired an employee, after November 6, 1986, without properly complying with the statutory provisions of 8 U.S.C. §1324a(b).

In the present case, Respondent admits that it hired the relevant employees after November 6, 1986. Therefore the only remaining question is whether Respondent failed to comply with the provisions of 8 U.S.C. §1324a(b) with respect to them.

8 U.S.C. §1324a(b)(2) specifically requires employees to state that they are eligible for employment in the United States. It says:

> The individual must attest, under penalty of perjury on the form designated or established [I-9]... that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this chapter or by the Attorney General to be hired...for such employment.

The regulation which implements this subsection [codified at 8 C.F.R. §274a.2(b)(1)(i)(A)] further describes the employer's duty. It states that an individual who is hired must: "Complete Section 1..." Although the regulation could be more specific, the statute and the form itself are clear enough. Section 1 of the I-9 form is entitled "Employee Information and Verification." It

contains boxes in which the employee is to write his full name, his address, his date of birth and his social security number. This is followed by an "under penalty of perjury" statement which permits the employee to choose a box comporting with the three statutory choices: U.S. citizen or national; alien lawfully admitted for permanent residence (with a blank for the Alien Number); or an authorized alien (with blanks for the appropriate authorization numbers). The employee is to check one of those three boxes and then sign and date the choice.

In order to establish Respondent's defective compliance with the paperwork requirements, Complainant presented photocopies of the I-9 forms for the sixteen employees in question. Respondent has admitted that the photocopies are true and accurate reproductions of the original forms.

Inspecting the sixteen I-9 forms, it is clear that each employee filled out Section 1 only in part. All wrote their names, addresses, dates of birth and social security numbers in the proper spaces; all signed and dated the signature and date blanks. None, however, checked any of the three boxes which certify their employment eligibility. Thus Section 1 of all sixteen forms is incomplete.

On the other hand, Section 2 of each of the sixteen forms is properly filled out. Each of the employees provided Respondent with proper underlying documentation demonstrating his or her right to be employed in the United States. Complainant has not charged Respondent with hiring any illegal aliens and the evidence presented does not suggest that it has. The principal purpose of the I-9 form is to allow an employer to ensure that it is not hiring anyone who is not authorized to be employed in the United States. To that extent, the form has worked as intended. Even so, the statute clearly requires employees to certify, under penalty of perjury, their eligibility. These employees did not comply and it is Respondent's duty to see that they do.

Based upon the above factual material, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or after November 6, 1986, Respondent hired the following individuals for employment in the United States:

   a. Raul Del Cid
   b. Fernando Dominguez
   c. Alba E. Galvez
   d. Maria Margarita Galvez

e. Jose Rodrigo Hernandez-Montenegro
aka: Jose Hernandez
f. Shigeo Kosugi
g. Luis Alonso Machado
h. Manuel Antonio Machado
i. Jose Francisco Martinez
j. Berta Mejia-Coronel
k. Maricela Mejia-Coronel
l. Hugo Ruben Morales
m. Francisco Morazan
n. Macario Navas-Coronel
o. Antonio R. Rivas
p. Jose Luis Rivera

2. Respondent hired each of the individuals listed in paragraph 1. above without requiring them to have properly completed Section 1. of their Employment Eligibility Verification Forms (I-9 form).

3. Each of the acts described in paragraph 2. above constitutes a separate violation of 8 U.S.C. §1324a(a)(1)(B) as a breach of the duty and obligation of an employer to comply with the verification of employment eligibility and inspection requirements as set forth in 8 U.S.C. §1324a(b).

PENALTY DETERMINATION

Where violations of the paperwork requirements have been found, a civil money penalty between the amounts of $100 and $1,000 must be imposed upon the offending employer for each individual instance of violation. See 8 U.S.C. §1324a(e)(5); see also U.S. v. Felipe, OCAHO Case No. 89100151 (1989). The actual penalty amount is to be determined after a consideration of five statutorily-mandated factors. The factors are: 1) size of the employer; 2) the employer's good faith; 3) the seriousness of the violations; 4) whether the violations involve any actual employment of unauthorized aliens; and 5) whether the employer has a history of previous violations. See 8 U.S.C. §1324a(e)(3).

nant seeks a penalty of $4,800
ances of violation). I examine
of the five statutory factors

ny notice dated January 2, 1991,
ident has presented material
five penalty factors. However,
ere is some evidence regarding
ness of its violations.

Complainant asserts in its Motion for Summary Decision that Respondent employed a total of only twenty-three employees during 1989. Assuming that as a fact, Respondent is a relatively small business. Therefore its size is a mitigating penalty factor. Moreover, Respondent's current violations are not "serious" since Respondent has otherwise complied with all of its document inspection duties and since the violations did not lead to the employment of any unauthorized aliens. Hence, this factor also serves to mitigate the current penalty.

In light of the above discussion, and in view of the general lack of evidence addressing the penalty factors, I find the proper civil money penalty in this case to be $100 per violation. Therefore the total civil monetary penalty is $1,600.

Based upon the foregoing findings of fact and conclusions of law, I hereby issue the following:

ORDER [1]

Respondent, Eagles Group, Inc. d/b/a Golden Eagles Services, shall:

> Pay a total civil monetary penalty in the amount of $1,600 calculated as follows: $100 for each of the sixteen violations of 8 U.S.C. §1324a(a)(1)(B).

IT IS FURTHER ORDERED that the hearing in this matter, previously indefinitely postponed, be, and hereby is, CANCELED.

San Francisco, California
Dated: June 11, 1991

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[1] Review of this decision
request for review with the Ch
within 5 days of this order as
order shall become the final or
within 30 days from the
Administrative Hearing Officer

☆ U.S. Government Prin